

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
Developing a Unified)	
Intercarrier Compensation Regime)	CC Docket No. 01-92

In the Matter of ASAP Paging, Inc.)	
Petition for Preemption of Public Utility)	
Commission of Texas Concerning Retail)	WC Docket 04-6
Rating of Local Calls to CMRS)	
Providers)	

COMMENTS OF F. CARY FITCH d/b/a FITCH AFFORDABLE TELECOM

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In the Matter of Developing a Unified Intercarrier Compensation Regime)))	CC Docket No. 01-92
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In the Matter of ASAP Paging, Inc. Petition for Preemption of Public Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Providers)))))	WC Docket 04-6
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COMMENTS OF F. CARY FITCH d/b/a FITCH AFFORDABLE TELECOM

NOW COMES F. CARY FITCH D/B/A AFFORDABLE TELECOM (“Affordable Telecom”), though its counsel, and submits these relatively brief Comments in response to the Further Notice of Proposed Rulemaking (“*FNPRM*”) in Docket 01-92.¹ Affordable Telecom’s Comments will be mostly related to the pending and separate proceeding initiated by ASAP Paging, Inc. in WC Docket 04-6,² so Affordable Telecom has included that proceeding in the caption above and will simultaneously file in that case as well. As part of these Comments Affordable Telecom will advise the Commission of recent actions by other Texas “rural” ILECs that make the need to expeditiously resolve the *ASAP* Request even more imperative.

¹ Affordable Telecom is (along with several others) concurring in the separate comments submitted by Ionary Consulting. Those comments address the prospective rules that should flow from Docket 01-92 and do not address Docket 04-6.

² The *FNPRM* mentions Docket 04-6 in notes 401-403 and seeks comment on the issues raised in Docket 04-6.

1. ASAP requests a decision under the current rules in Docket 04-6 without holding it hostage to prospective intercarrier compensation reform.

Docket 04-6 requests a ruling on the current rules. While the issues in that case may provide some guidance and insight into how the rules should be amended on a prospective basis, the request in Docket 04-6 should be expeditiously resolved by interpretation of the rules as they exist today.³

2. The Commission has in fact already answered the question in the context of porting.

As it pertains to porting, this Commission has already ruled that ILECs cannot require CMRS carriers to have an interconnection agreement or a POI in the local calling area before they honor a CMRS carrier's rate center associations.⁴ Therefore if a CMRS carrier were to use an ILEC-ported out number to serve its customers in a Texas extended local calling area, the ILEC could not require 1+ dialing and the state could not authorize or require them to do so because of the FCC's porting rules.

³ Then Chairman Powell and Commissioner Abernathy each separately indicated disappointment that the *ASAP* case (as well as the *Sprint Declaratory Ruling Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC Docket No. 01-92 (2002) and *@ Communications Petition for Declaratory Ruling*, CC Docket No. 02-4 (2002) have not been disposed. The *FNPRM* indicates in note 297 that the decisions in the *Sprint Petition for Declaratory Ruling* and the *@ Communications Petition for Declaratory Ruling* will clarify the application of current rules. The Commission should also expeditiously resolve Docket 04-6 based on current rules.

⁴ *Central Texas Telephone Cooperative, Inc. v. FCC*, No. 03-1405, __ F.3d __ (D.C.Cir., March 11, 2005), reviewing Memorandum Opinion and Order, *In the Matter of Telephone Number Portability – Carrier Requests for Clarification of Wireless-Wireless Porting Issues* CC Docket No. 95-116, FCC 03-237 (Rel. Oct. 2003) [“...the relevant location is not – as petitioners argue – the location of the switch or point of interconnection.”]; *USTA and CenturyTel v. FCC*, No. 03-1414 (D.C.Cir. March 11, 2005), [“...in short the order requires wireline carriers to port telephone numbers without regard to the physical location of the subscriber, the equipment, or the carrier...”] The FCC emphasized in its briefing to the DC Circuit that the ILEC has the duty under existing rules to cover the cost of any transport out of its area to the Point of Interconnection of the CMRS carrier. *See*, Brief of Respondent Federal Communications Commission, *United States Telecom Ass’n, et al v. Federal Communications Commission*, Nos. 03-1414; 03-1443 (July 9, 2004) at pages 32-33 [“Rural ILECs have [] always been required to deliver traffic to other carriers through direct or indirect interconnection – even when a wireless carrier's switch is not located in the rural ILEC's rate center.”]

Ported numbers retain their original retail rating,⁵ so if the ILEC honored extended local calling when it (or another ILEC in the extended local calling area) held the number, then the ILEC is clearly required by the FCC's rules to continue to retail rate as local after the number is ported. In the same vein, an ILEC cannot require establishment of a POI or any other kind of presence in the rate center.⁶ It would be quite incongruous to conclude there are different rules for retail rating for ported numbers and non-porting numbers. This Commission, however, indicated that the treatment should be the same "as if the wireless carrier had assigned the customer a new number rated to that rate center."⁷ Clearly this Commission expects both ported numbers and non ported numbers to have the same retail rating – based on rate center assignments.

⁵ See, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, *In the Matter of Telephone Number Portability CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, ¶ 22, CC Docket 95-116, FCC 03-284 (Nov. 10, 2003) ("Wireline-Wireless Portability Order") ["We conclude that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port."]

⁶ *Central Texas Telephone Cooperative, Inc. v. FCC*, No. 03-1405, ___ F.3d ___ (D.C.Cir., March 11, 2005), reviewing Memorandum Opinion and Order, *In the Matter of Telephone Number Portability – Carrier Requests for Clarification of Wireline-Wireless Porting Issues* CC Docket No. 95-116, FCC 03-237 (Rel. Oct. 2003). ["...the relevant location is not – as petitioners argue – the location of the switch or point of interconnection."]; *USTA and CenturyTel v. FCC*, No. 03-1414 (D.C.Cir. March 11, 2005), ["...in short the order requires wireline carriers to port telephone numbers without regard to the physical location of the subscriber, the equipment, or the carrier..."]

⁷ *Wireline-Wireless Portability Order* ¶ 28 ["We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same. As stated above, a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported number will continue to be rated in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center."]

3. ASAP does not seek preemption of state determinations of the geographic definition of “local calling areas.” ASAP sought preemption because the state discriminated between ILEC and CMRS numbers associated with that area.

The states have traditionally determined the geographic area within which a call would be retail “local” as opposed to “toll.” The *ASAP* Petition does not seek preemption of any state decision on any geographic area. As the Commission has observed on many occasions, the industry has devised the “rate center” concept to implement state local calling area determinations. Each carrier will select the rate center that will “hold” a number. Then all calls within that rate center, or between that rate center and any other rate center in the state-determined local geographic area, are and must be retail rated “local” and not “toll.” In order for the current numbering system – upon which every ILEC and CMRS carrier depends – to work, it must be the rule that every carrier (and every ILEC in particular) honors all other carriers’ rate center assignments for retail rating purposes. If an ILEC is allowed to discriminate between NXXs associated with rate centers in a state determined local calling area based on any number of potential criteria, then the entire numbering system will collapse and “local” numbers will have no meaning.

4. The problem is getting worse.

CenturyTel is no longer the “only” Texas ILEC that is not honoring competitive carrier rate center assignments. Apparently other ILECs have been emboldened by the delay in the *ASAP* case and are starting to act in the same manner as CenturyTel. In addition, SBC Texas has recently made network changes that had the effect of no longer allowing smaller ILECs to route extended local calling traffic through an SBC end office in an extended local calling area. If the small ILEC retranslates its local switch to direct CMRS traffic associated with extended local calling rate centers to the access tandem,

however, the call properly routes and local retail rating is preserved. Some of the smaller ILECs have performed the retranslation, while others have refused, with the result that calls to CMRS carriers are blocked unless the ILEC end user redials using 1+ and pays a toll to the CMRS carrier's local number.

Some Texas ILECs to date have honored competitive carrier rate center assignments in extended local calling areas and they deserve credit for doing so. They have, when necessary, agreed to and then did perform any necessary translations to send extended local calling traffic to the access tandem if calls initially directed to an end office no longer complete. These Texas ILECs are: SBC,⁸ Verizon,⁹ Sprint/United¹⁰ and Brazos Telephone Cooperative, Inc.¹¹

⁸ Although SBC Texas to date has honored rate center assignments in extended local calling areas, this may soon change. SBC Texas has opposed inclusion of terms "contractualizing" dialing parity obligations (including recognizing Affordable Telecom's rate center assignments for retail rating purposes) in the context of a § 252 agreement. SBC Texas has also relied heavily on the Texas PUC decision that is challenged in *ASAP* to support this opposition. Affordable Telecom and SBC are currently arbitrating the terms of a § 252 agreement in Texas. *F. Cary Fitch d/b/a Fitch Affordable Telecom Petition for Arbitration Against SBC Texas under § 252 of the Communications Act*, Texas PUC Docket 29415. In that case, SBC Texas has asked the Texas PUC to rule that Affordable Telecom is not entitled to interconnect notwithstanding Affordable Telecom's possession of "interconnected" CMRS Radio Station Authorizations, since Affordable Telecom uses IP technology to support its paging service (according to SBC Texas that means that Affordable Telecom is not providing a "telecommunications service") and Affordable Telecom also uses its NXXs to collect SBC-originated traffic that goes to Affordable Telecom's "Dial up Internet Service" using the "paging" interconnection arrangement (according to SBC Texas CMRS carriers cannot provide information services over a common interconnection arrangement, notwithstanding 47 C.F.R. § 51.100(b)). SBC also asserts that Affordable Telecom cannot provide a competitive transit service using the current interconnection arrangement but must "negotiate" a separate interconnection agreement and use separate facilities in order to provide competitive transit service.

⁹ To its credit, Verizon has consistently honored CMRS carrier rate center assignments in Texas, even where "extended local calling" traffic is concerned and has given no indication it intends to change that practice. As a matter of practice, Verizon sends calls addressed to a CMRS carrier NXX to an access tandem and has not sent them to an ILEC end office.

¹⁰ To their credit, the Sprint ILECs have consistently honored CMRS carrier rate center assignments in Texas, even where "extended local calling" traffic is concerned and have given no indication they intend to change that practice. Sprint's routing practice is unclear, but the calls seem to complete.

¹¹ Brazos used to send traffic addressed to CMRS carriers NXXs within extended local calling areas to the ILEC (usually SBC Texas) end office in the rate center to which the CMRS carrier's NXX is assigned. SBC Texas used to allow its end offices to redirect these calls to the SBC Texas access tandem for completion to the CMRS carrier switch, but has recently begun to perform end office switch translations

Guadalupe Valley Telephone Cooperative, Inc. and Southwest Texas Telephone Company have refused to honor Affordable Telecom's rate center assignments for extended local calling service. They will not load Affordable Telecom's NXXs in the switch as "local" and as a result calls do not complete unless the LEC's end user dials 1+ and pays a toll. Ganado Telephone Company, Inc. initially honored Affordable Telecom's extended local calling rate center assignment by directing them to SBC Texas' "Edna" end office, which then re-routed calls addressed to Affordable Telecom NXXs to the access tandem. SBC Texas recently performed some translations in the Edna end office, and that end office no longer redirects calls addressed to Affordable Telecom's NXXs to the access tandem. Ganado has refused to perform any retranslations in its own end office so as to send Affordable Telecom traffic to the access tandem, and all calls addressed to Affordable Telecom that originate in Ganado no longer complete unless the Ganado end user dials 1+ and pays a toll.

Those ILECs that are refusing to honor CMRS carrier NXX rate center assignments are unreasonably discriminating based on numbering resources. They recognize other ILEC rate center assignments, but not those of non-ILECs. This has nothing to do with the state's determination of which geographic areas should be "local" to each other. The state should retain that determination; this Commission, however, must retain and execute its power over the use of numbering to prohibit incumbent LECs from preventing competitive entry (especially in rural areas). If this Commission does not

which no longer allow this to occur. When this happened in a Brazos extended local calling area, Brazos agreed to and then did perform its own translations to direct Affordable Telecom addressed traffic to the SBC access tandem. Those calls complete and local retail rating is preserved.

ensure that local numbers are in fact “local” then there will not be any “local” competition.

CONCLUSION

Affordable Telecom respectfully requests that the Commission decide the issues in Docket 04-6 under the current rules and to do so in an expeditious manner. If any new rules flowing from Docket 01-92 affect the outcome of Docket 04-6, then they will apply on a prospective basis and the industry will adjust to them. The problem related to ILECs refusing to honor CMRS carriers’ rate center assignments in violation of current rules is getting worse and only an expeditious Commission ruling in Docket 04-6 will prevent further exacerbation of the problem.

Respectfully submitted,

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